

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBER
	:	
JAMES ANTHONY NORSWORTHY,	:	NO. 05-15098-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Dismiss, filed by James Anthony Norsworthy (hereinafter the "Debtor"). Adam M. Goodman, the Standing Chapter 13 Trustee (hereinafter the "Trustee") opposes the dismissal of the case and has moved for the conversion of the case to one under Chapter 7. This matter constitutes a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(b)(2)(B); 1334.

On November 23, 2005, the Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code. At the time of the filing, the Debtor owned real property located at 152

Hamm Road, Jackson, Georgia (hereinafter the "Property"). Southern Horizon Bank (hereinafter "SHB") held a first priority deed to secure debt on the Property. On January 13, 2006, SHB filed a secured claim in the amount of \$154,336.32. On June 1, 2006, the Trustee filed a complaint against SHB seeking to avoid the transfer of the security interest in the Property as a preferential transfer. On September 4, 2007, the Court granted judgment in favor of the Trustee and avoided the transfer of the security interest pursuant to section 547(b) of the Code. The Trustee also filed a complaint to avoid the transfer of a second priority mortgage held on the Property by the Debtor's mother. That transfer was also avoided by the Court, leaving the Property unencumbered.

Following the confirmation of the Debtor's Chapter 13 plan in July 24, 2008, the Debtor filed a motion to voluntarily dismiss the case on March 4, 2009. On March 5, 2009, the Trustee filed a motion to convert the case to one under Chapter 7. In his Motion, the Trustee asserts that the Debtor has engaged in egregious conduct, which includes selling the Property without Court permission and failing to account to the Trustee for the disposition of the Property. At a hearing held on April 2, 2009, the Debtor, through counsel, argued that he has an absolute right to dismiss his Chapter 13 case. Accordingly, the Debtor believes that, whatever his conduct may have been during the course of this pending case, it is totally irrelevant, as this Court has no discretion in the matter, but must simply allow the dismissal of his case.

The Court agrees with the Trustee's position that, as amply stated by the Ninth Circuit

Court of Appeals, that following the United States Supreme Court's decision in *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007), a "debtor's right to voluntarily dismiss a Chapter 13 case under section 1307(b) is *not* absolute, but is qualified by an implied exception for bad-faith conduct or abuse of the bankruptcy process." *In re Rosson*, 545 F.3d 764 (9th Cir. 2008); *see also In re Letterese*, 397 B.R. 507 (Bankr. S.D. Fla. 2008) (holding that "a chapter 13 debtor does not have an absolute right to dismiss his or her chapter 13 case in the face of bad faith conduct"); *Williamson v. Office of the United States Trustee*, 2009 WL 562238 (S.D. Ga. Mar. 4, 2009) (applying a similar analysis to conclude that the bankruptcy court properly delayed in ruling on a Chapter 12 debtor's motion to voluntarily dismiss a case in order to determine whether the case should be converted to Chapter 7). The Court hereby adopts the reasoning of *In re Rosson* and finds that, in accordance with that holding, the Debtor's conduct during the course of this case is relevant to the question of whether the case should be dismissed or converted to one under Chapter 7.¹

The Court will hold a further evidentiary hearing in this case to determine whether the Debtor's conduct rises to such a level that would permit the Court to exercise its limited discretion to deny the Debtor's request to dismiss the case and, instead, convert the case.

¹ The Court acknowledges the fact that the United States District Court for the Northern District of Georgia reversed a similar ruling made by the Honorable Robert Brizendine. *See Cotton v. Stalzer*, Civ. Action 06-CV-1863-RWS; 08-CV-0567-RWS (Bankr. Case 05-79109-REB) (N.D. Ga. Mar. 10, 2008). The District Court's opinion, however, was not written with the benefit of the reasoning employed by the Ninth Circuit Court of Appeals in *In re Rosson* and failed to address the holding of *Rosson* that the Supreme Court's holding in *Marrama* requires a different result. For these reasons, this Court respectfully disagrees with the result reached in *Cotton v. Stalzer*.

Said hearing will be held on **July 30, 2009 at 2:00 p.m.** in Second Floor Courtroom, 18
Greenville Street, Newnan, Georgia.

END OF DOCUMENT

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